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LOK SABHA

The following report of the Joint Committee on the Bill to prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith, was presented to Lok Sabha on the 29th February, 1956:—

Composition of the Joint Committee

Lok Sabha

Shri Chimanlal Chakubhai Shah—*Chairman.*

MEMBERS

2. Shri Bhawanji A. Khimji
3. Shri Khushi Ram Sharma
- Dr. Jayantilal Narbheram Parekh
5. Shri Shivram Rango Rane
6. Shri S. S. Natarajan
7. Shri C. P. Matthen
8. Shri C. R. Basappa
9. Shri R. P. Nevatia
10. Shri Radhelal Vyas
11. Shri Bhupendra Nath Misra
12. Swami Ramanand Shastri
13. Shri Sarju Prasad Misra
14. Choudhary Raghubir Singh
15. Shri Krishnacharya Joshi
16. Shri B. R. Bhagat
17. Shri Banarsi Prasad Jhunjunwala

18. Shri Jagannath Kolay
19. Shri Lokenath Mishra
20. Shri Tek Chand
21. Shri Ghamandi Lal Bansal
22. Shri Radheshyam Ramkumar Morarka
23. Shri U. M. Trivedi
24. Shri Tulsidas Kilachand
25. Shri M. S. Gurupadaswamy
26. Shri Jaswantraaj Mehta
27. Shri Narayan Rao Waghmare
28. Shri Kamal Kumar Basu
29. Shri T. B. Vittal Rao
30. Shri C. D. Deshmukh

Rajya Sabha

31. Shri H. C. Dasappa
32. Shri Shriyans Prasad Jain
33. Shri T. S. Pattabiraman
34. Shri A. Dharam Das
35. Shri Chandulal P. Parikh
36. Shri D. Y. Pawar
37. Kazi Karimuddin
38. Shri M. M. Sur
39. Shri R. S. Doogar
40. Shri Bhogilal M. Shah
41. Prof. A. R. Wadia
42. Shri T. V. Kamalaswamy
43. Shri B. C. Ghose
44. Shri N. D. M. Prasadarao
45. Shri M. C. Shah.

DRAFTSMAN

Shri G. R. Rajagopaul, *Additional Secretary and Chief Draftsman, Ministry of Law.*

SECRETARIAT

Shri N. N. Mallya, *Deputy Secretary.*
Shri P. K. Patnaik, *Under Secretary.*

Report of the Joint Committee

In the Chairman of the Joint Committee to which the *Bill to prevent undesirable transaction in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith, was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 24th December, 1954. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri C. D. Deshmukh on the 28th November, 1955, and was discussed in the House and adopted on the same day.

3. The Rajya Sabha discussed and concurred in the said motion on the 5th December, 1955.

4. The message from Rajya Sabha was read out to the Lok Sabha on the 7th December, 1955.

5. The Committee held seven sittings in all.

6. The first sitting of the Committee was held on the 20th December, 1955 to draw up a programme of work.

7. The Committee heard the evidence tendered by the representatives of the following associations on the 16th February, 1956:—

(1) The Bombay Share & Stock Brokers Association, Ahmedabad.

(2) The Society of Assistant Members, Stock Exchange, Calcutta.

8. The Committee considered the Bill clause by clause at the sittings held on the 27th and 28th January, as well as 17th and 18th February, 1956.

9. The Report of the Committee was to be presented by the 15th February, 1956. The Committee was granted extension of time on the 15th February, 1956 upto the 29th February, 1956.

*Published in Part II—Section 2 of the *Gazette of India, Extraordinary*, dated the 24th December, 1954.

10. The Committee considered and adopted the Report on the 27th February, 1956.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

12. *Clause 2.*—For spot delivery contracts the Committee feel that a period of three days is too long. In their opinion, two days including the date of contract should be sufficient for the purpose. The definition has, therefore, been amended accordingly.

13. *Clause 3.*—In sub-clause (2) (d), the words “in cases where the rules provide for such membership” have been inserted as some stock exchanges admit partnership firms as members whereas others do not.

In the same sub-clause (2) (d), the words “by the stock exchange” have been deleted since authorised representatives and clerks are not nominated and appointed by the stock exchange.

The other amendment is clarificatory.

14. *Clause 4.*—The Committee feel that Government should have the right to decide as to what will be the membership of a stock exchange, and therefore, among other conditions which the Central Government may impose, the condition as to the number of members has been specially mentioned.

The Committee consider that Government should not have the power to nominate an indefinite number of their representatives on the stock exchanges. They consider that the maximum number should be restricted to three. Sub-clause (2) (iii) has therefore been amended accordingly.

The Committee consider that regular periodical audit of the accounts of members is not necessary and that it would be sufficient to provide for audit of accounts only where such audit is considered necessary by Government. The sub-clause has therefore been amended accordingly. The words “to ensure the solvency of members” have been omitted as unnecessary.

15. *Clause 5.*—The clause has been slightly amended to bring it in conformity with sub-clause (4) of clause 4.

16. *Clause 6.*—In view of the practical difficulties in preserving all correspondence, memoranda and papers, the Committee consider that, under sub-clause (2), it would be sufficient to mention only “books of accounts and other documents”.

Sub-clause (3)(a) has slightly been amended to make a provision for a report being called directly from a member of a stock exchange, and sub-clause 3(b) has been re-cast to bring it in conformity with the language of section 8(2)(b) of the Forward Contracts (Regulation) Act, 1952.

17. *Clause 9.*—The Committee have inserted a new item (c) under sub-clause (2) which says that bye-laws may provide for the publication of certain information by the clearing house at the end of every settlement period. The Committee consider that this information would provide an overall picture of the transactions in a stock exchange during a settlement period and be of considerable help to the public.

Regarding the regulation or prohibition of blank transfers, the Committee feel that the currency of blank transfers should be limited by bye-laws to a period not exceeding six months. The Committee have however not made any amendment to this effect. They suggest that the Government as well as the stock exchanges should take note of and give effect to it.

Item (r) [original item (q)] has been amended to refer specifically to the emergency that may arise as a result of pool or syndicated operations or cornering, in securities markets.

The new item (t) would enable stock exchanges to make bye-laws for the separation of the functions of jobbers and brokers as in other countries.

18. *Clause 11.*—Sub-clause (1) has been amended so as to bring it in conformity with the language employed in clauses 4 and 5 of the Bill.

The Committee consider that it is desirable to elect a new governing body before the determination of the period of office of the person appointed by the Central Government under this clause. Sub-clauses (4) and (5) have been amended accordingly.

19 *Clause 12.*—A drafting change has been made in this clause.

20. *Clause 13.*—The amendment made in this clause is for purposes of clarification.

21. *Original Clause 16.*—This clause related to spot delivery contracts in notified areas only. The Committee have now made provision under clause 18 in respect of spot delivery contracts in notified as well as non-notified areas. This clause has therefore been omitted.

22. *Clause 16 (Original clause 17).*—The Committee do not see any special advantage in consulting the recognised stock exchanges concerned when undesirable speculation takes place in any area and the Government are of the opinion that it should be stopped. Sub-clause (1) has therefore been amended accordingly.

23. *Clause 17 (Original clause 18).*—The Committee are of the opinion that save as otherwise provided in clause 18 there should be no system of licensing of dealers in securities in notified areas where recognised stock exchanges function and to which clause 13 will apply.

Sub-clause (1) of original clause 18 has therefore been amended so as to restrict such licensing to non-notified areas.

24. *Clause 18 (New clause).*—The original clause 16 excluded spot delivery contracts from the scope of clauses 13, 14 and 15 but included them within the scope of clause 18 which dealt with licensing of dealers in securities.

The Committee consider that if spot delivery contracts require to be regulated, the necessity for such regulation can arise both in areas notified under clause 13 as well as in other areas.

The effect of sub-clause (1) is ordinarily to leave spot delivery contracts free in notified as well as non-notified areas.

While the Committee feel that spot delivery contracts should ordinarily be free, they consider that power should at the same time be retained by the Central Government to regulate them by a system of licensing (both in notified as well as non-notified areas) when there is any abuse. Sub-clause (2) makes provision for this purpose.

25. *Clause 19 (New clause).*—This new clause, which is partly based on clause 26 (1)(b) of the Gorwala Committee's Bill, makes all stock exchanges other than recognised stock exchanges illegal. The Committee are of opinion that unrecognised stock exchanges should not be allowed to continue; but in order to avoid difficulties with respect to existing stock exchanges, power is given to the Central Government to bring this provision into force in any State or area on suitable dates.

26. *Clause 20 (Original clause 19).*—The clause has been amended to make it operative right from the date of commencement of the Act.

27. *Clause 23 (Original clause 22).*—The Committee have considered it desirable to include under sub-clause (1) the offences mentioned in items (a) and (c) to (f) of clause 26 of the Gorwala Commit-

tee's Bill. Items (e) to (i) have accordingly been inserted under this sub-clause.

The Committee also feel that a contravention of clause 15 need be punishable with fine only. Clause 23 has been re-cast accordingly.

28. *Clause 25 (Original clause 24).*—The amendment made is consequential.

29. *Clause 26 (Original clause 25).*—The Committee feel that the condition of previous sanction of the Central Government for taking cognizance of offences under this Act is hardly necessary. This condition has therefore been omitted from this clause.

30. *Clause 27 (Original clause 26).*—The words "and retain" have been inserted in order to make the intention clear.

The object of this clause is to discourage blank transfers indirectly. At the same time the Committee feel that to include bonus and other rights within the ambit of this clause may involve any person concerned in a loss of capital and may mean too severe a penalty. The Committee have therefore excluded from the purview of this clause bonus and other rights, especially as they feel confident that blank transfers would, as indicated in paragraph 17, be adequately regulated by the stock exchanges.

The Committee feel that no particular purpose will be served in insisting that the documents should be lodged for registration fifteen days before the company closed its register of members for the year. The Committee have fixed fifteen days of the date on which the dividend became due as the period for registration of the transfer.

Further, they feel that this period of fifteen days should be extended in certain cases on the lines suggested in the Explanation to clause 24 in the Gorwala Committee's draft Bill.

The clause has therefore been amended accordingly.

31. *Clause 28 (Original clause 27).*—This clause has been re-cast to confine the exemptions to a few specified cases only.

32. The Joint Committee recommend that the Bill as amended be passed.

C. C. SHAH,
Chairman,
Joint Committee.

NEW DELHI;
The 27th February, 1956.

Minutes of Dissent**I**

I approve of the Report subject to the following minute of dissent.

This piece of legislation is merely one of a series aiming at the achievement of that peculiar conception known as "socialistic pattern of society". A Committee was formed as long ago as 23rd June 1951 to examine the working of the stock exchanges and make its suggestions for regulation of trading in securities. What this piece of legislation will ultimately achieve is not very clear to me, except one thing which is very patent and that is that the interference of Government in day-to-day affairs of the people is growing and this Bill also fits in with this idea of interference. The ultimate aim, however, remains obscure.

It is said that the legitimate function of a stock exchange is to provide a forum in the public interest ensuring the smooth and continual marketing of shares.

The Gorwala Committee suggested a general pattern of control by suggesting canalisation of all speculation through recognized stock exchanges and their regulation on the question of the bounds of healthy speculation. These, to my mind, are speculative ideas in themselves. What is healthy and what is not healthy, what is properly regulated and what is not properly regulated are all matters of personal whims and prejudices. The Bill as it comes out of the Committee checkmates the activities of an ordinary businessman about his manipulating his investments. This may also apply to a private investor as well. This is not a Bill which makes wagering contract void but it envisages legalised regulated wagering within bounds and then tries to penalise anyone who commits a breach of this regulated wagering. The idea to treat the breach of contract as a penal offence had its root in the various Control Orders under the Defence of India Rules but there also, notwithstanding the stringency of the provisions regarding the contravention of Orders, some safeguards were provided for the unwary citizen and against the working of an unscrupulous police officer. The Forward Contracts (Regulation) Act of 1952 (Act No. LXXIV of 1952) started the idea of making breaches of contracts or formation of contracts penal offences, and cognizable at that, although punishable with one year's imprisonment. Perhaps the Government has not applied its

mind to the mischief that results from such provisions, although it must be quite aware of the situations.

The other consideration to which I draw attention is the contemplated provision to limit the number of membership to any particular recognized Exchange. It may or may not work any hardship depending upon the maximum number so fixed but it does interfere with the exercise of fundamental rights vested in every citizen of India. Article 19(1) (c) and (g) give us the freedom to form associations and to practise any profession or to carry on any occupation, trade or business. The inhibitions to this freedom are that of interest of public order or morality or the lacking of professional or technical qualification for carrying on any occupation, trade or business. If these restrictions are not covered by the restrictions provided for under the fundamental rights then the law to that extent will be invalid.

My suggestion therefore is to omit the words in brackets in Clause 4(1) (b).

I also suggest that Clause 18(2) be omitted. The provision as recommended will work unnecessary hardship for spot delivery contracts. It is possible that the provision may remain a dead letter; yet it stands to reason that the provision shall not be embodied in that Act.

The provision of penalties in Clause 23 is a very drastic provision and would have fitted in more under the Gambling Act than in this Act which is purely a measure trying to regulate property rights. The provision of punishment with imprisonment for a term extending to one year be substituted by simple imprisonment for a term which may extend to six months, and the provision in Clause 25 making offences under Section 23(1) cognizable be entirely omitted. It should not be lost sight of that when all is said and done the offences are entirely of a quasi-civil nature and to make such offences cognizable will open up a venue for oppression by the already not-much-respected-and-liked-police service. On the one hand, where the Judiciary is concerned, the Bill has made the provision of not allowing magistrates lower than the first class to take cognizance, but where the police is concerned even a constable would be entitled to arrest and cause harassment for any technical breach of the law to any unwary but perfectly honest citizen. If this provision of cognizable offence is to be retained, I further suggest that no police officer be allowed to take such cognizance except on a report made in writing by a public servant or by a secretary or any authorised officer of a recognized stock exchange.

It is high time that we consider the working of such provisions of law which are in direct conflict with the conception of the gravity of criminal offences as envisaged in the Criminal Procedure Code.

Under the Indian Penal Code such quasi-civil offences although punishable with imprisonment of more than three years are not made cognizable offences and the saving of the harassment by the police appears to be the primary concern. It is one thing to commit an offence showing moral turpitude and quite another thing to get more property or earn more than others by some irregular methods.

U. M. TRIVEDI.

NEW DELHI;

The 28th February, 1956.

II

In spite of our view that the Stock Exchange should just be a specialised agency for easy and free transactions and dealings in stock by the genuine investors, we agreed to serve on this Select Committee of this Bill as we thought it was the sincere desire of the mover and the Government to control and check undesirable transactions, better known as speculation in securities, as suggested in the preamble. Our experience in the Select Committee completely belied the hope. The Government seemed to propound a theory that some speculation is good to which we could subscribe. It is true that so big a powerful private sector remains in our economy that the stock exchange may serve some purpose. But our private sector cannot play the same role in the national economy as its counterpart in advanced and full-fledged capitalist countries like U.S.A. or Great Britain. Our private sector must fit in with the overall social objective of a welfare State. Its scope, power and utility to that extent is limited. Therefore, the regulation of the Stock Exchange should be such as would help the investors to buy and sell these securities quickly and easily and also would allow those who could read the trends of the market in advance to earn money in difference after actual buying and selling. All transactions in the Exchange must have some reasonable relation with the availability of the actual securities in the market. It is quite well-known that transactions in difference through clearing house, has no bearing to the securities available. Often a group of speculators continue and artificially control the market and the burden of loss resulting from such movement are invariably transferred on the genuine investors or laymen, who come in the market to make a living.

Therefore, the clearing house should deal with actual delivery of shares and not in difference and carrying forward such difference which is known as *budla*. It is well-known that in Calcutta the crises in the market were few and far between before the clearing house system was introduced in Calcutta. Under the clearing house system as prevalent a person with limited resources can transact an enormous sum as he will never have to take delivery of shares. Thus it helps speculation. We, therefore, suggest that all accounts should be cleared within three days of such transaction and actual delivery of securities should take place. *Budla* or carry forward should be completely prohibited.

We further suggest that blank transfer which is peculiar to India should be prohibited or so regulated as to apply only to spot delivery within a few days. In justifying the existence of the Stock Exchange and prevailing practice of security dealing we often draw upon the example of the U.S.A. and U.K. where also the blank transfer does not exist. By allowing the blank transfer the exchequer loses a considerable sum as stamp duty when we are so much in need of resources.

We are firmly of opinion that the Government should transfer and impose certain fees or charges on the transactions that pass through the clearing house on any clearing day. It would bring considerable revenue to the Government. Moreover, when all types of speculation that is prevalent in the country are taxed, why such speculation should be spared? It is well known that moneys carried through dealing often escape taxation.

We, therefore, suggest that there should be compulsory bye-laws which are to provide for prohibition of *taravani* business, separation of the function of jobbers and brokers, depositing certain margin for the securities dealing and penalising over-trading. Such bye-laws should also provide for the regulation of healthy business in declaring the conditions and powers of the assistant members. It would have been better if the Statute provided some model rules in the schedule as in the case of Company Law.

We are further of opinion that no member should be allowed to form partnership with outsiders. A stock broker should be a person with some qualification and knowledge to guide and advise the investors. A non-member may be a person with pull-over resources and therefore, he may become an absentee or sleeping partner earning huge sums as a parasite. It is quite likely that lay clients may be duped by such partners. It is necessary that like professional experts, such as solicitors, surveyors or auditors, the partnership should be restricted to members. As the member firms, proprietary or partnership, deal with large sums of moneys and also

with genuine money investors who are often deceived, it is necessary to have compulsory auditing. It will stop also tax evasion.

The books of the members should be preserved for *eight years* as in the Income-tax rules and not for 'not exceeding five years' as provided here. Argument of shortage of space has no bearing and is meaningless.

We are of opinion that no member should deal or transact with a non-member as a principle, even with the latter's consent. Such transactions should be illegalised and persons committing such transactions should be severely penalised. Such practices generally lead to cheating the ordinary man or investors.

In clauses 13 to 20 provisions have been made for declaring illegal and void certain types of contract. It is well known that in the existing securities market the curtain wagering contract are entered into which may not be strictly legal but they are generally accepted by the persons indulging in. To make these provisions really effective it is absolutely necessary that persons entering into such illegal or void contract should be severely penalised both by fine and imprisonment.

Lastly, we feel that the provisions for penalty are much too lenient. If we want to stop the evils such provision should be made more severe and exemplary.

In conclusion we must say that we are disappointed by the provisions of the Bill. It is hopelessly ineffective in stopping the evils of speculation which is the main objective of the Bill. The Bill in the present form will only allow bureaucratic control of the Stock Exchange much to the detriment of its healthy growth. It will also make a set of monopolist or privileged class who will be the members of the recognised numbers of the stock exchanges with restricted membership. The public will lose the benefit of a competitive market of stock brokers. The Bill completely belies its purpose. We hope the Parliament will make necessary amendments to make the objective real. We have read the report.

KAMAL KUMAR BASU.

T. B. VITTAL RAO.

NEW DELHI;

The 28th February, 1956.

III

I agree with the report in all respects but I consider that if the following provisions are incorporated in the Bill, the stock exchanges will be able to function on sound lines and undesirable transactions will have little scope. I am therefore writing this minute of dissent.

Clause 9

(1) The stock exchange should necessarily provide for important bye-laws mentioned in sub-section (2) and therefore the word "shall" should be inserted in place of the word "may" in sub-sections (1) and (2). Without the provisions of bye-laws mentioned in sub-section (2) no stock exchange can function with stability or efficiency. Such bye-laws are also at present adopted in important stock exchanges and the legislature should be assured of a healthy regulation and control by incorporating the word "shall" instead of "may". It is at least necessary that bye-law(c) under sub-section (2) and the bye-laws mentioned below should be enforced by statute on all recognised stock exchanges.

(2) In sub-clause (f) it should be provided that the backwardisation charges for any clearing should not exceed a prescribed percentage of the value of the security. There are instances on some exchanges where backwardisation charges during one year totalled Rs. 40/- on the original value of Rs. 100/-. Shares of a company are limited in number and no squeeze should be encouraged by *budla* transactions in order to protect a large number operating on the stock exchanges.

(3) Sub-clause (i) mentions only prescription of marginal requirements. This is not sufficient. In an important stock exchange, a member is at present required to pay margins if his purchases or sales in a speculative security viz. Tata Iron or Indian Iron is exceeded by a prescribed limit of purchases, say 4000. A member is also at present required to pay a prescribed margin if the total value of his purchases and sales exceeds say Rs. 20 lacs at any time. In one important exchange there is also a provision that a member shall pay a margin whenever a security goes higher or lower by 5% over the last clearing rate. All these three types of margins are very essential and a *bye-law should provide that a margin will be payable by a member when (a) he buys or sells a prescribed security over a prescribed quantity (b) his total purchases or sales exceed a prescribed value (c) when the market fluctuation in a security is over a prescribed percentage*. If these three marginal requirements are incorporated in the bye-laws, the market will fluctuate mainly on intrinsic merits. Huge transactions by operators through their financial strength in their own or their

benamidars' name resulting in squeezes or bear raids to the detriment of a bonafide investor will then be rare. If we really mean to control and regulate unhealthy speculation, we must adopt well defined measures and the legislature will then have discharged its duty. Bonafide investors will also be protected.

(4) *Sub-clause (p)*: The bye-law should provide for a maximum and minimum scale of brokerage. Some members are at present infringing the bye-law and do not mention brokerage charged in the contract, thus enabling them to pocket the difference in the market price and the control price. They are also charging a ridiculously low brokerage for operations of big financiers who are thereby enabled to manipulate on the stock exchange with a small charge. Levying a minimum brokerage should be properly enforced on the stock exchange.

(5) *Sub-clause (r)*: It should be expressly provided that in an emergency when open contracts are to be squared up, any rate prevailing on the stock exchange during the three previous days of the declaration of emergency should be adopted after previous sanction of the Central Government. All *bonafide* contracts will have no value if arbitrary rates prevailing weeks ago, are made applicable. The sub-clause should clearly provide for this because doubts have been raised owing to the recent arbitrary fixation of cotton rates without reference to rates prevailing at the time of declaration of emergency. There are many bonafide operators who wish to take or give delivery and should not on that account suffer an unreasonable loss. An investor who has bought a security at Rs. 1000/- should not be told that his transaction will be squared up at Rs. 900/- and that he will not get the delivery of the security and that he will pay Rs. 100/- as loss for squaring up. Any rate prevailing during the last three days of a declaration of emergency should be fair for regulating or controlling an Exchange, if Government is exercising proper judgement in declaring an emergency. Power to fix arbitrary rates prevailing weeks ago gives occasion to bulls or bears to influence decisions as regards the rate. Bonafide investors or sellers have always to be duly protected.

(6) As regards sub-clause (u), there should be limitations on the volume of trade by members but exceptional circumstances are not necessary for a reasonable limitation. The sub-clause will, however, be unnecessary if the margin system suggested above is adopted.

(7) Sub-clause (w) should be added to provide for a bye-law that no member or partner of a member shall be entitled to be a

member or a partner of a member of any exchange dealing in forward transactions under the Forward Contracts Act. This bye-law is necessary because many members are operating on many exchanges and their commitments on other exchanges may involve an exchange in financial difficulties. There is such a healthy provision on the Bombay Stock Exchange and it should be adopted for all exchanges. One desirous of dealing on many exchanges can act as a client in all exchanges and be a member only in one exchange.

(8) Sub-clause (x) should be added to provide that a joint appeal by ten members shall lie to the Central Government for refusal of admission of membership to them by a stock exchange. If persons are willing to join an exchange and are agreeable to abide by all its conditions and if the total number of members of the exchange is below the maximum prescribed as per clause 4(1) (b), the exchange should not be permitted to be a closed body by constantly refusing admission to others while enjoying a monopoly of trading in the notified area. If the operations of the exchange are not economic, there will be no applications for new entrants, but government is the proper authority to determine whether an exchange is economic or not.

(9) Sub-clause (y) should be added to provide that there shall be a paid chairman on the Board of each recognised exchange and that he will not be connected with the forward transactions. This healthy practice prevails on the Bombay Stock Exchange.

Clause 14

A provision should be added to sub-section (1) saying that if a member and a non-member act in collusion for contravening a bye-law while entering into a forward contract, the contract may be void as between them but the stock exchange shall recover from the contracting non-member all the difference due for the benefit of all other members who might have lost by their entering into a contract with the delinquent member.

The Bombay Exchange and the Gorwala Committee are against making all contracts void owing to contravention of bye-laws. There have been examples where big operators have indirectly put stock exchanges into difficulties by pocketing only gains and declaring inability to pay when losses arise. Such collusion by the member and client should be discouraged by the above proviso.

CHANDULAL P. PARIKH

NEW DELHI;

The 28th February, 1956.

IV

While appreciating the approach of the Committee and agreeing with the basic idea of the need to regulate undesirable transactions in securities, I beg to differ on some of the conclusions and methods suggested, and as such, I am constrained to write this note indicating the views on some of the points.

At the outset I do not agree to the view suggested in the report that the limit of currency for blank transfers in a clearing house of a Stock Exchange should be restricted to six months or so. While so much has been said and written about blank transfers and particularly by the Gorwala Committee that I do not want to dilate upon the same in detail. I would briefly state that the objections have been made saying that the system of blank transfers—

(a) *Encourages evasion of taxation.*—Now this is a completely erroneous view-point and has not been proved by facts. If blank transfers could be useful for tax evasions then the Government of India securities which are endorsed blank at the back could be used in still a greater way for tax evasion. Advocates of this argument seem to confuse the issue of 'blank' and 'benami' which are quite distinct from one another.

(b) *Helps in taking control of some of the companies.*—This is also equally a misconceived notion. An issue which has to be decided by votes—presupposes the actual transfers taking place—rather than keeping the shares blank. With the recent amendment of company law in any case the argument does not stand at all, since there are enough safeguards for the same.

(c) *Brings loss of stamp revenue to the Government.*—If the idea is only to get more revenue from the stamp duty, surely its remedy does not lie in a stock exchange regulation Bill. Government may at any time come with a proposal for an overall increase in the stamp duty.

(d) *Encourages the speculation and erratic movements of the market.*—In my humble view this is again a misconceived idea. I cannot understand how restriction on blank transfers would act as a check on speculation. By keeping liquidity and negotiability of transfers—as in New York Stock Exchange—market will find its equilibrium. While most of the shares of long-time investors are actually transferred at one time or the other there is always a floating stock on the market. This stock mostly acts as a cushion

or buffer and absorbs the shocks or strain on the market. While money may be arranged or made available at the time of settlement, stock is not so easily available or could not be produced at the time of settlement. Hence a shrewd operator may take advantage of the position and may tune the market to his dictate. In India the conditions of transfers etc., are not very regulated. Companies are situated far and wide with no active machinery for easy and quick transfers. The whole idea of restriction may result in undesirable effects.

In the clearing house too, many may not be tempted to touch a transfer which has run 4 to 5 months, out of the six months. In that case, such a buyer will instruct to square up his business in that settlement and go in again in the next settlement. The net result will be increased speculation and more erratic price movement at the time of settlements. In India banks are advancing and giving over-draft facility on shares pledged with blank transfers or on the Bank's name. Banks also collect dividend for their clients. The whole system will be upset if a change is made without assessing its implications. In my opinion stock exchanges should be asked to give their serious thought to this vital matter. They may be asked to try different methods and assess the concrete results, and only after knowing from their knowledge and experience a definite step about blank transfers be taken or incorporated in any bye-law.

In clause 14(1)(i), I feel it is likely to result in grave consequences at times. Firstly, no one knows what are the specific bye-laws. Even conceding that the breach of a specific bye-law is serious matter—by all means punish the guilty. Here it must be remembered that just as there is a broker and his client at one end—at the other end also there is broker or brokers and innocent *bazar* parties. Now a situation may arise or may be manoeuvred whereby the innocent *bazar* parties or brokers at the other end may not even know that there is a breach of specific bye-laws—and yet he suffers and stands to lose. An unscrupulous broker and his client may join hands and act in collusion to the detriment of the exchange and community at large. Here unwittingly a situation is created whereby a legal right is conferred to a person who may wish to act in an unscrupulous manner by the use of words “void as respect the right of any member etc.” I feel that in 14(1)(i) after “as respects the rights”—addition of the words “as to his brokerage, commission or reward”—will improve the matters.

Clause 15.—About Principals Contract: I feel the same is based on imaginary fears. On the contrary, 3 days time unnecessarily concedes the right to the client to change his mind—if there are fluctuations. If the idea is to protect the client and give him definite ideas as to the nature of contract, let there be a different colour and form of such a contract form—so that his or her attention is drawn to it. Let him refuse then on the same day, but the idea of giving time of 3 days is not comprehensible.

Clause 20.—In my view, in the very existence of a forward market, option trading is implicit and difficult to ban. Howsoever the object may be laudable it is difficult to achieve results. It would have been better if an attempt was made to regulate options as in London and New York Stock Exchanges rather than ban it. I cannot understand 20(2) and giving of retrospective effect about option contracts. While unperformed contract may become illegal, there may have been regular operations against such option and these may stand. This may result in a load on the market and in the event of wide fluctuations market may be put into unnecessary crisis.

Clauses 18 and 18A.—While the intention is good, the idea of giving licences in a notified area where a recognised stock exchange exists, even in a particular contingency and for spot contracts, is not very understandable. I feel a proper check may not be maintained on a licensed broker for want of regular machinery.

I do not like the idea of punishment by imprisonment and creation of a new class of criminal and cognisable offences in the commercial world.

I hope the Government and the House will give their due consideration to some of the points mentioned above.

JAYANTILAL N. PAREKH.

NEW DELHI,

The 28th February, 1956.

V

The Securities Contracts (Regulation) Bill, 1954 seeks to regulate stock exchanges and makes other provisions relating to the business of dealing in securities. "The legitimate function of a stock exchange", according to the Gorwala Committee, "is to provide consistently with the larger public interest, a forum and a service which are so organised, in the interests of both buyers and sellers, as to ensure the smooth and continual marketing of shares." It is

only to the extent that the Bill enables stock exchanges to fulfil this function more efficiently than it can be said to be necessary or useful. The Bill needs examination only from this point of view.

While regulation may be desirable, excessive regulation is not. Shri C. D. Deshmukh, when he was the Governor of the Reserve Bank of India, had said in 1948: "I am inclined to favour Government's framing minimum legislation covering only the vital aspects of reform, rather than its attempting a complete regimentation of the stock exchanges." For this purpose, it should have been sufficient had the Government taken the power to grant recognition to, and withdraw recognition of, stock exchanges. Had the Government restricted its interference to cases where the governing bodies of such exchanges had been unable owing to lack of powers, or unwilling owing to personal interest or inefficiency, to take action necessary to prevent unhealthy speculation or check it when it arises, that might have been understandable.

The present Bill appears to go beyond these limits. It grants to the Government, in addition to the powers listed above, the powers to approve bye-laws made by stock exchanges, to make or amend bye-laws on its own initiative, to direct stock exchanges, to suspend business, and to supersede the governing bodies of stock exchanges. These are vast powers and will need to be exercised with care and after consultation with at least, the governing bodies of the stock exchanges.

The Government, however, has not only taken powers to finally decide on many of these subjects, but to do so without consulting the governing bodies. The provisions to consult the governing bodies would not have detracted from the powers of the Government; they would certainly have added to their authority. However, the Government prefers to disregard procedure in its haste to assume unobstructed and absolute powers.

A market like the stock exchange is a sensitive market, and depends for its efficient and smooth functioning on confidence—confidence in its members that contracts will be performed as entered into and that there will be no outside interference affecting the making and performance of such contracts. Where interference does take place, it should be by persons whom the market trusts as acting in its general interest and in accordance with principles already laid down and known. However, the Government has assumed vast powers like those to suspend business and to prohibit contracts in certain securities except with Government permission, which may have a one-sided impact on the making and performance

of contracts, affecting their sanctity and impairing the market's confidence in the proper fulfilment of contracts voluntarily entered into.

As the Gorwala Committee put it, "within its own sphere, the exchange should have a large measure of autonomy and Government's role should be limited to keeping in touch with happenings on the exchange and ensuring that it enforces its bye-laws properly." Internal autonomy in the case of a market is not merely meant to satisfy the democratic urge of its members, it is also an essential condition for its smooth and efficient functioning. By giving powers to the Government to suspend business and to supersede the Governing bodies, the Bill encroaches on the internal autonomy of the stock exchanges, and, I am afraid, may adversely affect their working.

In the light of the general observations made above, I am submitting below my detailed comments on some important clauses of the Bill where I differ with the majority report.

Clause 4(2) (i) and (ii)

These sub-clauses provide for Government power to lay down conditions regarding number of members of a stock exchange and for Government representation, by up to three nominees, on its governing body.

Transactions on the stock exchange are time contracts and are often made orally; the members of the stock exchange depend on each other's integrity for the carrying out of such time or oral contracts. Any insistence on the number of membership, by introducing persons who may not have the same standards, is likely to upset the smooth carrying out of contracts. Transactions being offsetting or interrelated, even a single failure to fulfil a contract may have repercussions disproportionate to the original failure. An unhealthy increase in numbers, by bringing about cut-throat competition, may lead to unhealthy speculation; if genuine investing business does not justify such increase, it will also increase the speculative business, destabilising the market and preventing it from fulfilling its function of satisfying genuine investors' needs.

The representation of the Government on the governing bodies of commercial bodies is obnoxious in principle as it gives power without responsibility or accountability; it is unhealthy in practice as the Government from being a final arbiter in difficult times, becomes a participant in the process of making decisions. Should it be argued that Government representation is necessary to enable it to take informed decisions and exercise powers with knowledge—that is, to provide a liaison between the Government and the govern-

ing body—it should be sufficient to have one Government observer for the purpose; as the Gorwala Committee had recommended, such a person should be Government or a Reserve Bank of India officer.

Clause 5 (also Clause 11)

The right of the governing body in the Government Bill to receive a 'show cause' notice, and to make representations, has been whittled down in the Joint Committee to that of 'being heard in the matter.' While this does not preclude the former, the Government can, should it so desire, reduce the whole procedure into a mere formality. The original procedure was not only democratic; it would also have enabled the Government to take informed decisions.

Clause 6

This clause now empowers the Government to call upon a member of the stock exchange to supply information.

It should not matter to the Government whether the information required is obtained through the stock exchange or, as now provided, direct from the member concerned. The amendment is, however, bad in principle as it enables the Government to bypass the governing body of the stock exchange. It trenches on the internal autonomy of the stock exchange.

Clause 9

The words 'and from time to time amend' have been omitted from the Draft Bill. The Bill does not define "make" to include "amend." In other clauses of the Bill where powers have been given to the Government, as in Clauses 8(2) and 10(1), the words "and from time to time amend" have been used along with the word "make." It is likely therefore that a court may not hold the Central Clauses Act definition of "make" including "amend" to apply. As everybody is agreed that stock exchanges should have the power to amend the bye-laws, and as with the deletion of the words "from time to time amend" the position is obscure, it would be proper, in the interest of clarity, to restore the words "and from time to time amend".

The publication of carry-over figures, as required under one of the amendments to Clause 9(2), would be fraught with serious risks. It would make generally known the market position, and place the market at the mercy of powerful bulls and bears who would exploit such information for engineering large-scale manipulations of a dangerous character. Manipulative operations based on knowledge of the carry-over position would introduce an element of instability, dislocate trading every now and again, and disrupt the normal working of the market. It also does not seem feasible

to collect information regarding the number of squared up transactions in each security. At the most, the information would be available in respect of securities settled through the clearing house; even then the work of collation would be extremely laborious and the results would serve no useful purpose.

As regards furnishing information regarding the total number of shares received and delivered, such information should be restricted to shares settled through the Clearing House.

The amendment which requires disclosure of the total value of differences for each security is *prima facie* impracticable. Firstly, as is well known, members make up their accounts over-all and not security by security. Secondly, these over-all accounts are *temporarily* adjusted at, what are called, making-up prices. The differences arising therefrom are entirely fictitious. The differences would vary, and be large or small according as one making-up price or the other is fixed. In fact, the differences based on the making-up prices are an accidental offshoot of an accounting process, and the aggregate of such differences is of no real significance. The working out of such differences security by security would be impossible; the publication of figures relating to the aggregate differences would be mischievous and misleading as they would lend themselves to all sorts of erroneous misinterpretations and would be exploited by operators to manipulate the market.

The majority of the Joint Committee "feel that the currency of blank transfers should be limited by bye-laws to a period not exceeding six months." Blank transfers lend negotiability to shares by reducing the cost of their transfers and stability to the market by increasing the floating stock of shares. With the right now taken by the Government to approve changes in management, there should be no fear that the system will enable some persons to capture control of companies on the sly. The Gorwala Committee considered this question in detail, and its Report contains notes by its members on blank transfers. The practical difficulties are immense. In view of this, it would be advisable to keep the position flexible, by allowing the stock exchanges discretion on the subject, as was proposed by the Gorwala Committee.

Clause 12

The Government were not required, either under the Gorwala draft or the Draft Bill, to consult the governing body prior to suspending business on a stock exchange for the purpose of meeting an emergency. The Select Committee amendment would empower the Government to determine when an emergency is deemed to have arisen, enabling it to suspend business whenever it so decides. Under

clause 9 (2) (q), the governing body is given power to determine whether an emergency has arisen or not. This may create avoidable conflicts between the Government and the governing body as to whether an emergency has arisen or not. It is essential that the Government intervene only when necessary and when certain circumstances exist. Either the Government should provide for consultation with the governing body of the stock exchange, or its decision about the existence of an emergency should be subject to appeal to court.

Clause 14

A broker acts as an agent between two parties, and for every transaction with his principal, he has to make a corresponding transaction with the other side; thus on the stock exchange, agency, offsetting and hedging transactions take place continuously. Should the original transactions not be enforceable, this will, by making impossible the fulfilment of the corresponding transactions, penalise innocent constituents or *bazar* parties. As it stands, the clause may punish not merely the guilty, but also in the process penalise third parties who may not be aware of the contravention under the clause. The extent of penalty will depend upon the difference in prices at the time of entering into the contract and at the time of its settlement. Where this is nil, no penalty may arise; in other cases, its amount will be uncertain. The punishment is inappropriate to the offence and indiscriminate in its repercussions. The object of penalising the offending party can easily be achieved by providing for fine and suspension or expulsion of the offending member.

Clause 17

This clause as it is framed follows closely the wording in Clause 17 of the Forward Contracts (Regulation) Act, 1952. However, the scheme of the Forward Contracts (Regulation) Act, 1952 being different from that of the Securities Contracts (Regulation) Bill, 1954, the impact of the clause will be different on the stock exchange. Clause 17 of the Forward Contracts (Regulation) Act, 1952 is applicable to areas and to commodities which are not notified—that is, to areas and to commodities which are not subject to regulation. Clause 17 of the Securities Contracts (Regulation) Bill, 1954, on the other hand, may be made applicable to areas which are already notified. The purpose of Clause 17 of the Forward Contracts (Regulation) Act, 1952 is to control transactions in commodities or areas which would not otherwise be subject to regulation; Clause 17 of the Securities Contracts (Regulation) Bill, 1954 will impose control on securities and in areas which are already subject

to regulation. Further, as transactions on a stock exchange are inter-meshed, the cutting off or prohibition of contracts in one security, especially if it is a leading one which is used as a common hedge, may create a crisis in the market. The clause should therefore be deleted.

The Joint Committee amendment removes the provision for prior consultation with the governing body, provided for under the Draft Bill. This is another instance of the Government's tendency to remove not only all constraints on its powers, but even procedural requirements for their exercise, which should enable it to take informed decisions. In case the whole clause is not deleted, the deleted words, regarding consultation with the governing body, should be restored.

Clause 19

This clause seeks to prohibit options in securities. A similar provision in the Forward Contracts (Regulation) Act, 1952 has not succeeded in stopping such transactions in commodity markets. Rather than prohibiting outright options, it would be advisable to regulate such business.

Clause 22 and Clause 24

Transactions on a stock exchange are commercial transactions which should, at the most, be subject to civil actions. To impose a penalty of imprisonment and to make the contraventions cognisable offences are harsh penalties, incommensurate with the nature of the contravention.

Clause 25

It is essential that before action is started in a court of law for an offence under the Bill, the Central Government applies its mind to the subject; otherwise, petty and frivolous actions are likely to be started by persons with ulterior motives.

NEW DELHI,

TULSIDAS KILACHAND.

The 28th February, 1956.

THE SECURITIES CONTRACTS (REGULATION) BILL, 1954

(AS AMENDED BY THE JOINT COMMITTEE)

(Words underlined or side-lined indicate the amendments made by the Joint Committee; asterisks indicate omissions)

BILL No. 65 B OF 1954

A Bill to prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

PRELIMINARY

1. (1) This Act may be called the Securities Contracts (Regulation) Act, 1956. Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,— Definitions.

10 (a) 'contract' means a contract for or relating to the purchase or sale of securities;

(b) 'Government security' means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the pur-

pose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944;

18 of 1944.

(c) 'member' means a member of a recognised stock exchange;

(d) 'option in securities' means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a *teji*, a *mandi*, a *teji mandi*, a *galli*, a put, a call or a put and call in securities;

(e) 'prescribed' means prescribed by rules made under this Act;

(f) 'recognised stock exchange' means a stock exchange which is for the time being recognised by the Central Government under section 4;

(g) 'rules', with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association ;

(h) 'securities' include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) Government securities; and

(iii) rights or interests in securities;

(i) 'spot delivery contract' means a contract which provides for the actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period * * * aforesaid if the parties to the contract do not reside in the same town or locality;

(j) 'stock exchange' means any body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

35

RECOGNISED STOCK EXCHANGES

Application for recognition of stock exchanges. 3. (1) Any stock exchange, which is desirous of being recognised for the purposes of this Act, may make an application in the prescribed manner to the Central Government.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange, and in particular, to—

(a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the stock exchange;

(c) the admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;

(d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorised representatives and clerks * * * *.

4. (1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—

Grant of
recognition
to stock
exchanges.

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange; it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

(2) The conditions which the Central Government may prescribe under clause (a) of sub-section (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,—

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members:

(iii) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their * * audit by chartered accountants whenever such audit is required by the Central Government.

(3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India

(4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

(5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of section 3 shall be amended except with the approval of the Central Government.

Withdrawal
of recog-
nition.

5. If the Central Government is of opinion that the recognition granted to a stock exchange under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice, and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

Power of
Central
Government
to call for
periodical
returns or
direct inquir-
ies to be
made.

6. (1) Every recognised stock exchange shall furnish to the Central Government such periodical returns relating to its affairs as may be prescribed.

(2) Every recognised stock exchange and every member thereof shall maintain and preserve for such periods not exceeding five years

such books of account, * * * and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, * * * and other documents shall be subject
5 to inspection at all reasonable times by the Central Government.

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), the Central Government, if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing,—

10 (a) call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the Central Government may require; or—

15 (b) appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the Central Government
20 within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the Central Government.

(4) Where an inquiry in relation to the affairs of a recognised
25 stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken under sub-section (3),—

(a) every director, manager, secretary or other officer of such stock exchange;

(b) every member of such stock exchange;

30 (c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c);

35 shall be bound to produce before the authority making the inquiry all such books of account, * * * and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto
40 as may be required of him.

Annual reports to be furnished to Central Government by stock exchanges.

Power of Central Government to direct rules to be made or to make rules.

7. Every recognised stock exchange shall furnish the Central Government with a copy of the annual report, and such annual report shall contain such particulars as may be prescribed.

8. (1) Where, after consultation with the governing bodies of stock exchanges generally or with the governing body of any stock exchange in particular, the Central Government is of opinion that it is necessary or expedient so to do, it may, by order in writing together with a statement of the reasons therefor, direct recognised stock exchanges generally or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters specified in sub-section (2) of section 3 within a period of six months from the date of the order.

(2) If any recognised stock exchange fails or neglects to comply with any order made under sub-section (1) within the period specified therein, the Central Government may make the rules for, or amend the rules made by, the recognised stock exchange, either in the form proposed in the order or with such modifications thereof as may be agreed to between the stock exchange and the Central Government.

(3) Where in pursuance of this section any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette or Gazettes of the State or States in which the principal office or offices of the recognised stock exchange or exchanges is or are situate, and, on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in any other law for the time being in force, have effect as if they had been made or amended by the recognised stock exchange or stock exchanges, as the case may be.

7 of 1913.

Power of recognised stock exchanges to make bye-laws.

9. (1) Any recognised stock exchange may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of contracts.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the regulation of the hours of trade;

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the publication by the clearing house as soon as may be after each periodical settlement of the following particulars, namely:—

5 (i) the total number of each category of security carried over from one settlement period to another;

(ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;

10 (iii) the total number of each category of security actually delivered at each clearing;

(iv) the total amount paid as difference in respect of each category of security;

(d) the regulation or prohibition of blank transfers;

15 (e) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(f) the regulation, or prohibition of *budlas* or carry-over facilities;

(g) the fixing, altering or postponing of days for settlements;

20 (h) the determination and declaration of market rates, including the opening, closing, highest and lowest rates for securities;

25 (i) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

30 (j) the regulation of the entering into, making, performance, rescission and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;

35 (k) the regulation of *taravani* business including the placing of limitations thereon;

(l) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;

40 (m) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;

(n) the levy and recovery of fees, fines and penalties;

(o) the regulation of the course of business between parties to contracts in any capacity;

(p) the fixing of a scale of brokerage and other charges;

(q) the making, comparing, settling and closing of bargains;

(r) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;

(s) the regulation of dealings by members for their own account;

(t) the separation of the functions of jobbers and brokers;

(u) the limitations on the volume of trade done by any individual member in exceptional circumstances;

(v) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

(3) The bye-laws made under this section may—

(a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;

(b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:—

(i) fine;

(ii) expulsion from membership;

(iii) suspension from membership for a specified period;

(iv) any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

Provided that if the Central Government is satisfied in any case that in the interest of the trade or in the public interest any bye-law should be made immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

10. (1) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye-laws for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.

Power of Central Government to make or amend bye-laws of recognised stock exchanges.

(2) Where in pursuance of this section any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised stock exchange objects to any bye-laws made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof in the Gazette of India under sub-section (2), apply to the Central Government for revision thereof, and the Central Government may, after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that if the Central Government is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

11. (1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised stock exchange should be superseded, then, notwithstanding anything contained in any other law for the time being in force, the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the

Power of Central Government to supersede governing body of a recognised stock exchange.

governing body for the reasons specified in the notice and after giving an opportunity to the governing body to be heard in the matter it may, by notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and, where more persons than one are appointed, may appoint one of such persons to be the chairman and another to be the vice-chairman thereof.

(2) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised stock exchange as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the recognised stock exchange the governing body of which is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may from time to time, by like notification, vary such period.

(4) The Central Government may at any time before the determination of the period of office of any person or persons appointed under this section call upon the recognised stock exchange to re-constitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed under sub-section (1) shall re-vest or vest, as the case may be, in the governing body so re-constituted:

Provided that until a governing body is so re-constituted, the person or persons appointed under sub-section (1) shall continue to exercise and perform their powers and duties.

12. If in the opinion of the Central Government an emergency has arisen and for the purpose of meeting the emergency the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and, if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time:

Power to suspend business of recognised stock exchanges.

Provided that where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

CONTRACTS AND OPTIONS IN SECURITIES

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or area, that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or area, and thereupon every contract in such State or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange in such State or area or through or with such member shall be illegal.

Contracts in notified areas illegal in certain circumstances.

14. (1) Any contract entered into in any State or area specified in the notification under section 13 which is in contravention of any of the bye-laws specified in that behalf under clause (a) of sub-section (3) of section 9 shall be void—

Contracts in notified areas to be void in certain circumstances.

- (i) as respects the rights of any member of the recognised stock exchange who has entered into such contract in contravention of any such bye-law, and also

(ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

- (2) Nothing in sub-section (1) shall be construed to affect the right of any person other than a member of the recognised stock exchange to enforce any such contract or to recover any sum under or in respect of such contract if such person had no knowledge that the transaction was in contravention of any of the bye-laws specified in clause (a) of sub-section (3) of section 9.

Members
may not act
as principals
in certain
circum-
stances.

15. No member of a recognised stock exchange shall in respect of any securities enter into any contract as a principal with any person other than a member of a recognised stock exchange, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal: 5

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure written confirmation by such person of such consent or authority within three days from the date of the contract: 10

Provided further that no such written consent or authority of such person shall be necessary for closing out any outstanding contract entered into by such person in accordance with the bye-laws, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal. 15

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Power to
prohibit con-
tracts in cer-
tain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may * * * by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein. 20 25

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal.

Licensing of
dealers in
securities in
certain areas.

17. (1) Subject to the provisions of sub-section (3) and to the other provisions contained in this Act, no person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of a licence granted by the Central Government in this behalf. 30 35

(2) No notification under sub-section (1) shall be issued with respect to any State or area unless the Central Government is satisfied, having regard to the manner in which securities are being dealt with in such State or area, that it is desirable or expedient in the interest of the trade or in the public interest that such dealings should be regulated by a system of licensing. 40

(3) The restrictions imposed by sub-section (1) in relation to dealings in securities shall not apply to the doing of anything by or on behalf of a member of any recognised stock exchange.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area, (whether section 13 has been declared to apply to that State or area or not) it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which and the extent to which the provisions of that section shall so apply.

19. (1) No person shall, except with the permission of the Central Government, organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.

Stock exchanges other than recognised stock exchanges prohibited.

(2) This section shall come into force in any State or area on such date as the Central Government may, by notification in the Official Gazette, appoint.

20. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in securities entered into after the commencement of this Act shall be illegal.

Prohibition of options in securities.

(2) Any option in securities which has been entered into before such commencement and which remains to be performed, whether wholly or in part, after such commencement, shall, to that extent, become void.

LISTING OF SECURITIES BY PUBLIC COMPANIES

21. Notwithstanding anything contained in any other law for the time being in force, if the Central Government is of opinion, having regard to the nature of the securities issued by any public company as defined in the Indian Companies Act, 1913, or to the dealings in them, that it is necessary or expedient in the interest of the trade or in the public interest so to do, it may require the company, after giving it an opportunity of being heard in the

Power to compel listing of securities by public companies.

matter, to comply with such requirements as may be prescribed with respect to the listing of its securities on any recognised stock exchange.

Right of
appeal
against
refusal
of stock
exchanges
to list
securities
of public
companies.

22. Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company, the company shall be entitled to be furnished with the reasons for such refusal, and may appeal against the decision of the recognised stock exchange to the Central Government, and the Central Government may, after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the recognised stock exchange, and when it does so the stock exchange shall be bound to act in conformity with the orders of the Central Government.

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PENALTIES AND PROCEDURE

Penalties.

23. (1) Any person who—

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(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or

(b) enters into any contract in contravention of any of the provisions contained in section 13 or * * * section 16; or

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(c) contravenes the provisions contained in section 17, or section 19; or

(d) enters into any option in securities in contravention of the provisions contained in section 20; or

(e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or

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(f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or

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(g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or

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(h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or

(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act;

shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the orders of the Central Government under section 21 or section 22 shall, on conviction, be punishable with fine which may extend to one thousand rupees.

24. (1) Where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) 'company' means any body corporate and includes a firm or other association of individuals, and

(b) 'director', in relation to a firm, means a partner in the firm.

Certain offences to be cognizable.

25. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under sub-section (1) of section 23 shall be deemed to be a cognizable offence within the meaning of that Code. 5 of 1898.

Jurisdiction to try offences under this Act.

26. No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act * * * *.

MISCELLANEOUS

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Title to dividends.

27. It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend * * * declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend, * * * lodges the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due: 15

Provided that, where the company refuses to register the transfer of the security in the name of the transferee, nothing contained in this section shall affect the right of the transferee to enforce against the transferor or any other person his rights, if any, in relation to the transfer.

Explanation.—The period specified in this section shall be extended— 25

(i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;

(ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and 30

(iii) in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay. 35

Act not to apply in certain cases.

28. The provisions of this Act shall not apply to the Government, the Reserve Bank of India, any local authority or any corporation set up under a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this section. 40

29. No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised stock exchange or against any person or persons appointed under sub-section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder.

Protection of
action taken
in good faith.

30. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;

(b) the manner in which any inquiry for the purpose of recognizing any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;

(c) the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;

(d) the documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;

(e) the manner in which any inquiry by the governing body of a stock exchange shall be made under section 6;

(f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;

(g) the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;

(h) the requirements which shall be complied with by public companies for the purpose of getting their securities listed on any stock exchange; and

(i) any other matter which is to be or may be prescribed.

(3) Any rules made under this section shall be subject to the condition of previous publication and shall, as soon as may be, after their publication in the Official Gazette, be laid before both Houses of Parliament. 5

31. The Bombay Securities Contracts Control Act, 1925 is hereby repealed. 10 ^{Bombay Act}
^{VIII of 1925.}

Repeal.

M. N. KAUL,
Secretary.